(1)

Supreme Court, U.S.
FILED

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NO. 02-1325

IN THE

SUPREME COURT OF THE UNITED STATES

MAY TERM, 2003

AISHA KELLY

PETITIONER,

VS.

MEDICAL COLLEGE OF OHIO, AND

DEB HEINEMAN, M.A., M. ED., DIRECTOR, STUDENT SERVICES AND FINANCIAL AID,

MEDICAL COLLEGE OF OHIO, AND DR. ROBERT CRISSMAN, PROFESSOR OF MICROANATOMY, MEDICAL COLLEGE OF OHIO,

RESPONDENTS.

PETITIONER'S PETITION ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR SIXTH CIRCUIT

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36 pp

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. When during a school year a husband leaves his wife, a medical student, and their daughter has serious medical problems and disabilities which necessitate at times an individual babysitter, so that the Mother needs to borrow more money so the Mother can afford the childcare so the mother can attend classes, exams, and study, so as to have at least something closer to an equal amount to study and pursue educational opportunities like the male students, but the Medical College deliberately and intentionally through arbitrary, discriminatory rulings refuses to loan, just like it refused many, many, other similar Mothers at The Medical College, her the money so the Mother can hire a babysitter, and more fairly have the opportunity to learn, like the male students, is such discrimination which so denies the Mother an equal opportunity toward an education, a discrimination violation for sex under Title IX?

2. In the above scenario, is there need for clarification and judicial holding that

under Title IX and the related anti-sex discrimination statutes, that individuals are legally liable for violations of such statutory duties, as held so effectively in Hafer v. Melo, 502 US 21, (1991) where this court held state individuals, other than governors, judges, and prosecuting attorneys, may be liable individually for violations of Title 42, Section 1983, when now in several Circuit Courts of Appeal of the 11th, 8th, 7th, 6th and 2nd circuits have held: "...because they are not grant recipients school officials may not be sued in their individual capacity" under Title IX, but there is broad division in the District Courts?

3. Also in the above scenario, is the Plaintiff bound to allege that her actions under Title IX is brought individually against the individual defendants, even though that allegation is not necessary to provide jurisdiction under Rule 17(b)?

4. In the above scenario, have Defendants denied Plaintiff the equal protection

of the law in Defendants by their intentional and deliberate indifferent acts and omissions have caused a disparate impact on Plaintiff and the other Mothers by denying them an equal opportunity to study, attend classes and exams, in very great and substantial numbers, when in fact there was not even one single male parent present with childcare problems, and Defendants acted either intentionally or with deliberate disregard and marked disregard of the childcare needs of the single mother medical students?

5. In the above scenario have Defendants denied Plaintiff the equal protection of the laws by denying Plaintiff and women an equal opportunity to become doctors?

6. In a case with the above scenario, should the Court grant full Discovery, so al the relevant points, fully known to the Defendant Medical College, be brought to

light, and thereby the Court can come closer to identifying the issues in academia and also to see how complex, comprehensible; or simple, in truth, that the issues actually are?

7. In the above scenario, where the Mother, who has made A's and B's through her undergraduate classes, timely and regularly files and makes an Appeal claiming that when her written answers are fairly graded that she will have a higher than passing grade, but the Professor of Microanatomy, refuses to consider one page of her Answers, because she wrote them on a different part of the page than he claims he instructed, and the Mother also claims that her Answers deserve a passing grade if viewed objectively by any competent Professor or Instructor in Microanatomy; is the Mother entitled to a judicial review where her answers can be

judged, by using other Microanatomy Professors, by comparing her answers with what is stated in the textbook prescribed by the Professor? And if so, what are the guidelines as to what constitutes arbitrary, capricious, fair and objective consideration by the Professor? Are such issues any more complex than the complex issues commonly handled by Courts through expert witnesses in complex product liability, environmental disputes, or medical malpractice?

8. What are the proper rules for determining a Motion For A Temporary Restraining Order, where the Plaintiff is near destitute, and can lose her only real opportunity to become a doctor, as her father and mother were in their active days?

9. Would Justice and respect for the United States Court's System be advanced if the United States Supreme Court made clear that every Judge in the United States in

making and writing their decisions and opinions, should state all the relevant facts, Pro and Con, up for consideration, and in their Rulings by increments, should quote "Chapter and Verse" from the precedents, to assure all that each Judge was free from prejudice, partisanship, or special interest favor. Conclusory statements of facts, and Law, should be condemned, and each offender informed that sanctions of some form would be imposed by the Courts on each Judge so offending.

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STATEMENT OF BASIS OF JURISDICTION

This Petition For Writ of Certiorari is timely filed by being mailed in the U.S. Mail on December 4, 2002, from the Order, filed September 5, 2002, of the Sixth Circuit Court of Appeals which denied Petitioner's timely filed Petition For Re-Hearing En Banc, and Petition For Re-Hearing, for the Opinion and Judgment Entry, filed September 5, 2002, Affirming the Dismissal of the Action by the U.S.District Court, by Judgment Entry entered on October 23, 2000, and also in compliance with the letters from the Clerk.

On January 30, 2001, the U.S. District Court, Northern District of Ohio, Western Division, entered it's Final Judgment, and a timely Notice of Appeal had been filed on November 22, 2000. The U.S. District Court had filed its Order Dismissing the Action on October 23, 2000, and Plaintiff had

timely filed on Monday, November 6, 2000, it's PLAINTIFF'S MOTION TO MODIFY COURT'S ORDER AND JUDGMENT OF OCTOBER 23, 2000, MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT AND FOR ORAL HEARING. Then, thereafter Plaintiff filed her Notice of Appeal on November 22, 2000, and thus this Petition is timely before the Supreme Court of the United States, and Jurisdiction for this Petition is based on 28 U.S.C. Section 1254.

JURISDICTION FOR THIS APPEAL

Jurisdiction for this Appeal is given by 28 U.S.C. 1254.

CONSTITUTIONAL AND STATUTORY PARTS HERE RELEVANT.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive

any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

TITLE 42, SECTION 1983 is typed at Page 28 of Appendix. The Statute often referred to as Title IX, in parts here relevant:

"20 USCS 1681, Sex. In parts here material reads:

"§1681. Sex
(a) Prohibition against discrimination, exceptions. No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) Classes of educational institution subject to prohibition, in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education"

In the "Women's Educational Act of 1994", 20 USCS 7232, in part reads:

"§7232. Statement of purposes. It is the purpose of this part -- (1) to promote gender equity in education in the United States; (2) to provide financial assistance to enable educational agencies and institutions to meet the requirements of

the Title IX of the Educational Amendments of 1972 (20 U.S.C.A. §1681 et seq.); and (3) to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex, race, ethnic origin, limited-English proficiency, disability, or age." (Underscoring Counsel's)

In West's Federal Statutes, Title 42, Paragraph 2000 d-7 reads:

"42 §2000d-7 CIVIL RIGHTS CH. 21

(a) General provision

(1) A state shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. §794), title IX of the Education Amendments of 1972 (20 U.S.C.A. §1681 et seq.), the Age Discrimination Act of 1975 (42 U.S.C.A. §6101 et seq.), title VI of the Civil Rights of 1964 (42 U.S.C.A. §2000d et seq.), or the provision of any other Federal Statute prohibiting discrimination by recipients of Federal financial assistance.

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

(b) Effective date

The provisions of subsection (a) of this section shall take effect with respect to violations that occur in whole or in part after October 21, 1986.

(Pub.L. 99-506, Title X, §1003, Oct. 21, 1986, 100 Stat. 1845.)"

STATEMENT OF THE CASE

The Complaint, was timely filed in the U.S. District Court, N.D. of Ohio, W.D. on July 14, 2000, numbered 3:00CV7423, against the Defendant Medical College of Ohio, a State established and operated Corporation of Ohio, Defendant Deb Heineman, Director, Student Services and Financial Aid, Defendant Dr. Robert Crissman, Professor of Microanatomy, and the U.S. Department of Education, Ohio Department of Education was dropped after the timely appeal to the United States Sixth Circuit Court of Appeals. The college Defendants were charged with disciminating for sex against Plaintiff Aisha Kelly for denying her equal access and opportunity to attend and study

for classes and exams, given male and other students, basically because Plaintiff Kelly was not loaned sufficient money so she could pay for baby and childcare for her daughter Arielle, born in 1995, so Plaintiff could have something closer to an equal opportunity had by male students, for study, attending class and labs, and exams. All other medical students put in, on the average, around 58 hours per week, just as Plaintiff needed but didn't have. If MCO had loaned her the money needed, Plaintiff would have successfully completed medical school.

Plaintiff could only, after her husband's departure, study, attend classes, labs, and exams, only when Plaintiff had a babysitter, or study only when her daughter was asleep. Plaintiff Kelly matriculated in 1995. After Plaintiff Kelly's husband, Damien Kelly, suddenly left Plaintiff in Feb-

ruary, 1996, Plaintiff was denied sufficient loans, to secure necessary child care for her daughter who had a widely medically recognized allergy disability, requiring the child to avoid care centers serving any wheat foods, so that Plaintiff, as any caring mother, was forced to secure individual child care, which cost more than Plaintiff had money to herself pay, as Plaintiff depended, as Plaintiff candidly and repeatedly informed MCO, after her husband's aforesaid departure on the loans available to medical students. Defendants MCO, Heineman, and Crissman, though repeatedly requested simply refused, to recognize the many difficulties, denying access to class, and this Action was brought, seeking needed and deserved relief, so that Plaintiff would have a closer equal opportunity at MCO as given men. Some Professors at MCO, so granted such adjustment in hours and

times as each could have done, and still maintained all academic standards.

Plaintiff sought a Temporary Restraining Order, which was heard by District Judge John W. Potter on August 16 and 17, 2000, and which was denied on August 17, 2001, without Opinion, and a Transcript was filed on September 7, 2000. On September 11, 2000, Plaintiff filed a Motion to grant, reconsider the Temporary Restraining Order, and make Rule 52 Findings, Entry 12, App. P. 134., asking for Discovery and a meeting with MCO Dean and Dr. Crissman, to see what were the real facts in controversy, as Dr. Crissman had corrected his mistakes on sufficient of Plaintiff's answers so she was up to roughly 69, and 70 was passing.

On August 16, 2000, the MCO Defendants filed a Motion To Dismiss, and denied and opposed all Discovery.

On August 16 and 17, 2000, Judge John W. Potter in effect ruled that unless a strong showing of probability of success was shown that no Temporary Restraining Order nor Preliminary Injunction should be granted. Plaintiff and her Counsel by "Motion to Grant, Reconsider, Temporary Restraining Order and Make Rule 52 Findings", filed August 21, 2000, claimed that Judge Potter's ruling was contrary to the Sixth Circuit Court of Appeal's holding in Roth v. Bank of The Commonwealth, 583 F.2d 527 (1978) where this Court held at Page 537:

> "In general, the likelihood of success that need be shows will vary inversely with the degree of injury the plaintiff will suffer absent an injunction." (Emphasis Counsel's)."

At the hearing on the Temporary Restraining Order, the MCO Defendants in part argued that no Titled IX Action could be brought against MCO, because such was an Action against the State, and cited, at Page 13 of

the Transcript of the Temporary Restraining Order Hearing, as a governing precedent Hall v. Medical College of Ohio, 742 F.2d 299, 233 (6th Cir. 1984).

Here this Counsel wishes to point out that while this Counsel did not know it then, the Sixth Circuit Court of Appeals held that a State school or college did not have immunity, in Franks v. Kentucky School of the Blind, 142 F.3d 360 (6th Cir., 1998), where the Court held at Page 363:

> ""Section 5 of the Fourteenth Amendment grants Congress the authority to enforce the Amendment's substantive provisions which proscribe, inter alia, gender discrimination in education. United States v. Virginia, 518 U.S. 515, 116 S.Ct. 2264, 135L.Ed.2d 735 (1996). Since Title IX also proscribes gender discrimination in education, it follows that Congress had the authority, pursuant to Section 5, to make Title IX applicable to the states. Doe, 138 F.3d at 659-60; Crawford, 109 F.3d at 1283.
>
> Therefore, since Congress made its intention to abrogate the states' Title IX immunity unmistakable clear, and it had the authority to do so pursuant to Section 5 of the Fourteenth Amendment, we hold that

> Congress successfully abrogated the states' Eleventh Amendment immunity from Title IX lawsuits. Doe, 138 F.3d at 649-60; see also Crawford, 109 F.3d at 1282-83.""

Neither opposing Counsel for MCO nor District Judge Carr, nor the Court of Appeals, have ever explained nor inquired why the Hall case, Supra, was so cited, and the Frank case, Supra, not mentioned.

At the Temporary Restraining Order Hearing, the main issue was that Defendants MCO and MCO Financial Aid Director, Deb Heineman had caused a "Red Flag" to be placed at the U.S. Regional Department of Education Office on Plaintiff Kelly's eligibility to get the U.S. Loans, so she could no longer attend MCO. MCO accomplished this by Defendant Heineman accusing, without cause, and without notice to Ms. Kelly, her of not attending classes, whereas in Truth Plaintiff Kelly had attended classes; as proved by Testimony of Plaintiff Kelly, and also a

student Witness Tricia LaBuda, Temporary Restraining Order Transcript 60, and Dr. Barry L. Richardson, Assistant Vice President for Multicultural Affairs; Temporary Restraining Order Transcript, P. 81, so that accusation against Plaintiff was proved groundless, and without Due Process, so that MCO bore the responsibility for raising that devastating "Red Flag" against Plaintiff Kelly.

MCO Respondents kept Petitioner "in the dark" after Petitioner proved, as were the facts, that Plaintiff had attended class. Not until U.S. Dept. of Ed. Attorney Holly Sydlow informed Petitioner's Counsel, that the Regional U.S. Department of Education Person, had ruled that the eligibility of Plaintiff for the education loans was determined, not by her, but by MCO. MCO and their Counsel knew this for a month or

more, but didn't inform Petitioner nor her Counsel.

Her Plaintiff and her Counsel include a reference to facts by MCO which we feel induces prejudice, and a hostile attitude, laying more groundwork for more anti-female discrimination. These facts were first disclosed by MCO when Dr. Patricia Metting on December 12, 2002, in a Court Hearing to determine whether the Medical College of Ohio had committed acts of a "malicious purpose", bad faith or reckless disregard of duty, and any one of such findings would allow Plaintiff to sue MCO for damages from various alleged wrongs. At that time, MCO, through Dr. Metting disclosed a memorandum, of 3 pages, introduced as "EXHIBIT A", wherein she had made notes when on December 11, 1996, Plaintiff's husband Damien Kelly, on his own, informed Dr. Metting, Student Affairs of several very damaging accusa-

tions, none of which were true, against Plaintiff including, (1) Plaintiff had entered another medical school, under another name; (2) Plaintiff had outstanding unpaid medical school loans; (3) and that Plaintiff had applied to the prior medical schools as a black student. Neither Dr. Metting nor any MCO officer ever told Plaintiff of these accusations, nor asked Plaintiff about these accusations. Previously to this lawsuit filed July 14, 2000, no one at MCO had ever disclosed these allegations to Plaintiff, but some of the accusations relate to the hostile and discriminatory steps taken by Defendant Deb Heineman, MCO Director, Student Services and Financial Aid, who administered the student loan program, and Defendant Heineman carried out the MCO policy that no female student would be allowed more than $75 per week for child care. Defendant Heine-

man felt justified in accusing Plaintiff of lies, similar to those disclosed by Plaintiff's husband to MCO Dr. Metting states above. These included: that Plaintiff hadn't graduated from Ohio State University, that Plaintiff provided false information to get student loans. See Paragraph 20-26 of the Complaint.

Further just to receive such false accusations, and then after MCO had made such investigations as MCO wanted preliminarily to do, MCO acted in a "outrageous" manner not telling Plaintiff of the allegations for Plaintiff's side. Plaintiff says flatly such accusations were simply false. Again, Plaintiff and her Counsel had been given permission and each separately had inspected Plaintiff's file, but there was no word of such allegations in such files, and Plaintiff and her Counsel first learned of such accusations on December 12, 2002 in

the State of Ohio Court of Claims. Such steps meant that Plaintiff was not given opportunity to clear her name as due process and basic fairness call for.

ARGUMENT

THE DISTRICT COURT AND THE CIRCUIT COURT OF APPEALS IN HOLDING THAT PLAINTIFF HAD NOT PLEADED A CAUSE FOR ACTION UNDER TITLE 20, SECTION 1689, SEX DISCRIMINATION, AND ALL OTHER RELEVANT STATUTES, BECAUSE TO DENY A FEMALE MEDICAL STUDENT MONEY FOR A BABY SITTER SO THE MOTHER HAS AN EQUAL OPPORTUNITY FOR A MEDICAL EDUCATION IS UNLAWFUL DISCRIMINATION FOR SEX.

Due to a combination of circumstances this Counsel is pressed for time of completion. The facts are well supported by the Record, and in law in principle by Davis v. Monroe County Board Of Education, 526 U.S. 143, (1999), where a Board of Education failed, though notified, to take steps to stop sexual harassment of a female student by a male student, was held discrimination for sex, because it denied the female an

equal opportunity to learn. So here.

No specific case directly in point has been found by anyone. In DeLaCruz v. Tormey, 582 F.2d 475, (9th Cir. 1978), a group of female students were held to be discriminated for sex, because the Board simply ignored, and did nothing, about various appeals to take steps to provide some babysitters.

At MCO, and, we claim, at all college schools, a substantial number of female students have problems securing adequate babysitters every year. Women have substantially more problems than men if there's no adequate babysitters, and of such the records abound.

In the cases, for sex discrimination, and providing equal protection of the Law, the numbers are counted in teams supported, facilities, dollars spent and the like.

For cases so holding, we cite:

Kelley v. Board of Trustees of University of Illinois, 832 F. Supp. 237 (C.D. Ill. 1993; Cohen v. Brown University, 991 F.2d 888 (1st Cir. 1993); Daniels v. School Board of Bevard County, Florida, 985 F.Supp. 1458 (M.D. Fla. 1997).

We claim denial of Equal Protection of the Law

The record herein bears out that denials of loan money for child care has prejudiced and denied Plaintiff and other females an equal opportunity to an MCO education given to the men. Also, Plaintiff has not found a single male father at MCO. In the District Court, on August 21, 2000, Plaintiff filed a motion asking Judge Potter to reconsider his denial of a Temporary Restraining Order, the motion being Titled, "MOTION TO GRANT, RECONSIDER, TEMPORARY RESTRAINING ORDER AND MAKE RULE 52 FINDINGS, Entry #12, App. P. 134, to which was at-

tached Plaintiff's statement, which on Page 2 stated in part:

> "Shannon Ellis and Andrea Goings were in the Women's Protest group to increase child care allowance in 1996 by asking Defendant Heineman:

Although it is conceivable that a male student could be a single custodial parent, I have not been able to locate such a student during the time of my enrollment at MCO. In any case, the burden of childcare falls exclusively to predominantly on women... When his children are ill, crabby, or bored, he can leave the house knowing his wife will care for, soothe, and entertain their children and he does not have to pay her to so do. The female medical student, on the other hand, must study AND care for the children. She is the one who stays up all night, sometimes the night before exams, with an ill child. She is the one who reads 'just one more book, mommy'."

Plaintiff swore, by her affidavit, that mothers at prior schools also had the same type child care problems, and needs for larger loans. There in, PLAINTIFF'S MOTION FOR LEAVE TO FILE INSTANTER FINAL RESPONSE TO DEFENDANT'S MOTIONS TO DISMISS filed September 22, 2000, Entry #27, App. 257 where her affidavit reads at Page 1:

"By way of contrast, there are many female medical students. Female medical students throughout our nation struggle with unequal conditions under which they must study, and the sharply conflicting demands a woman faces. A few of us at MCO are Shannon Ellis Regaa Ibrahim, Andrea Goings, and Charmaine Gutjhar. There are others whom I cannot identify without the class rosters from the various years. All of us have been the victims of financial aid policy and the personal antipathy of professors who simply refuse to accommodate the special schedule needs of female medical students with sole childcare responsibilities, problems of which I am aware because these individuals and others have spoken directly with me.

I want to make the additional point that the problem women students have in obtaining equal access to higher educational opportunities is NOT limited to MCO or even all medical schools. This is a problem faced by women students at TU and other universities as well. I am aware of TU, OSU, and TSU students having similar problems through my personal enrollment at these schools..."

Counsel closes Plaintiff's claim that she has been denied an opportunity to attend classes, exams, lab work, and to study, as has been given the male students, and thus, she has been denied an equal opportunity to

learn, as given realistically to the male students, and such is a denial of equal protections of the laws. Thus in Davis vs. Monroe, County Board of Education, 526 US 629, (1998), this Court stated in part at page 650:

> "The statute's other prohibitions, moreover, help give content to the term "discrimination" in this context. Students are not only protected from discrimination, but also specifically shielded from being "excluded from participation in" or "denied the benefits of" any "education program or activity receiving Federal financial assistance." §1681(a). The statute makes clear that, whatever else it prohibits, students must not be denied access to educational benefits and opportunities on the basis of gender. We thus conclude that funding recipients are properly held liable in damages only where they are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the education opportunities or benefits provided by the school…."

ARGUMENT NO. 2

THE COURTS SHOULD HOLD COLLEGE PROFESSORS LIABLE WHEN SHOWN TO HAVE DENIED A STUDENT AN UNFAIR GRADE BECAUSE THE PROFESSORS WERE NOT OBJECTIVE, DENIED CHANGES

IN GRADE APPEALS NOT REQUIRED BY ACADEMIC STANDARDS, AND ACTED ARBITRARILY.

Discover was disallowed here. Unjust. Inequitable. When there's no dispute that Dr. Crissman on Petitioner's grade appeal on 35 answers, admitted 7, at least, were by mistake not given a passing grade, and the mistakes admitted, showed Petitioner was within .69 of 1 point from a passing grade. Discovery should have been allowed; and a meeting with Dr. Crissman and others needed to see what the real controversy was. Plaintiff claimed her written answers, could have been examined by Micro-anatomy Professors anywhere, and seen to be correct by the prescribed textbook, and by other proper academic medical standards

We claim support from Regents of University of Michigan v. Ewing, 474 US 214, making academic standards the guide against the arbitrary; and Sylvester v. Texas

Southern University, 957 US F. Supp 944, 946.

ARGUMENT NO. 3

THE DISTRICT COURT ERRED WHEN HOLDING TITLE IX DOES NOT MAKE INDIVIDUALS LIABLE FOR SEX DISCRIMINATION

See Doe v. Clairborne Tennessee, 103 F.3d, 495, 517. Petitioner's Counsel acknowledges that reportedly 5 or more Circuit Courts of Appeals have held that no individual may be held personally liable under Title IX, and related statutes. Thus in Bracey v. Buchanan, 55 F. Supp. 2d 416, (E.D. Va. 1999), the Court maintained on page 419 rulings by the Circuit Court of Appeals in the following circuits, 8th, 7th, 11th, 1st, and 6th. Petitioner and her Counsel claim that the better and proper interpretation of the relevant statues call for individuals to be held liable. 20 USCS 1681 provides in part:

"§1681. Sex

a. (Prohibition against discrimination, exceptions. No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:..."

Title 42, Section 1983 in its corresponding part provides:

"§1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity..."

Since Section 1983 was held by this Court to place individual liability on any state officers or employee other than the Governor, any Prosecuting Attorney, in Hafer v. Melo, 502 US21 (1991), it seems to follow

that there should be personal liability for the individuals not absolutely privileged. So here, the deterrent principle is valid, works and should be employed in this scenario. With it, much good can, and will, be done, without, much good will be lost.

ARGUMENT NO. 4

PLAINTIFF STATED A CASE FOR WRONGFUL INTERFENENCE BY DEFENDANTS WITH PLAINTIFF'S CONTRACTUAL AND PROPERTY RIGHTS FROM HER ENROLLMENT AT MCO.

We cite Bleicher v. University of Cincinnati College of Medicine, (1992), 78 Ohio App.3d 362; Bell v. Horton, (1996), 113 V. Ohio App.3d 363, 365.

The Record below supports each point argued herein, and goes into more detail.

CONCLUSION

Fairly speaking, each woman, despite having born a son or daughter, is entitled to as many loans as needed for babysitters, so

she'll have the same opportunity to be a Doctor as do the male students.

This Counsel has been told by one National Women's group that if Jurisdiction is taken, they will file a Brief Amicus Curiae, and so will a host of others.

This Counsel asks his logic and citations to be challenged. At 87, this Counsel will submit an Oral and Written Argument on the merits in keeping with the graduates of the University of Virginia.

Petitioner asks for this Court to grant Certiorari.

Respectfully submitted,

John G. Rust, Petitioner's Attorney

Supreme Court, U.S.
FILED

021325 DEC 4 2002

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5.	SECTION 1., FOURTEENTH AMENDMENT ALL PERSONS BORN OR NATURALIZED IN THE UNITE STATES, AND SUBJECT TO THE JURISDICITON THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICITON THE EQUAL PROTECTION OF THE LAWS.	26

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6. TITLE 42, SETION 1983 §1983. CIVIL ACTION FOR DEPRIVATION OF RIGHTS EVERY PERSON WHO, UNDER COLOR OF ANY STATUTE, ORDINANCE, REGULATION, CUSTOM, OR USAGE, OF ANY STATE OR TERRITORY OR THE DISTRICT OF COLUMBIA, SUBJECTS, OR CAUSES TO BE SUBJECTED, ANY CITIIZEN OF THE UNITED STATES OR OTHER PERSO WITHIN THE JURISDICTION THEREOF TO THE DEPRIVATION OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE CONSTITUTION AND LAWS, SHALL BE LIABLE TO THE PARTY INJURED IN AN ACTION AT LAW, SUIT, IN EQUITY, OR OTHER PROPER PROCEEDING FOR REDRESS, EXCEPT THAT AIN ANY ACTION BROUGHT AGAINST A JUDICIAL OFFICER FOR AN ACT OR OMISSION TAKEN IN SUCH OFFICER'S JUDICIAL CAPACITY, INJUCTIVE RELIEF SHALL NOT BE GRANTED UNLESS A DECLARATORY DECREE WAS VIOLATED OR DELARATORY RELIEF WAS UNAVAILABLE. FOR THE PURPOSES OF THIS SECTION, ANY ACT OF CONGRESS APPLICABLE EXCLUSIVELY TO THE DISTRICT OF COLUBIA SHALL BE CONSIDERED TO BE A STATUTE OF THE DISTRICT OF COLUMBIA.
*R.S. §1979; DEC. 29, 1979, P.L. 96-170, § 1,93 STAT. 1284; OCT. 19, 1996, P.L.104-317, TITLE III, §309(c), STAT. 3853.) 26

7. COMPLAINT 28

NO. 00-4492

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

AISHA KELLY,	:FILED: JULY 9, 2002
PLAINTIFF-APPELANT,	
V.	:ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO
MEDICAL COLLEGE OF OHIO, DEB HEINEMAN, AND ROBERT CRISSMAN,	
DEFENDANTS-APPELLEES.	:NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
	:SIXTH CIRCUIT RULE 28(g) LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 28(g) BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

BEFORE: KEITH AND DAUGHTREY, CIRCUIT JUDGES, AND MARBLEY, DISTRICT JUDGE.

PER CURIAM. The plaintiff, Aisha Kelly, a former medical student at the defendant Medical College of Ohio, appeals the district court's order dismissing this action pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim on which relief could be granted. Kelly's complaint alleged violations of Title IX of the Educational Amendments of 1972, 20 U.S.C. §1681; the Women's Educational Equity Act of 1994, 20 U.S.C. §7231; and 42 U.S.C. §1983. The plaintiff also alleges intentional infliction of emotional distress based on Ohio state law.

The complaint alleged that the college

The Hon. Algenon L. Marbley, United States District Judge for the Southern District of Ohio, sitting by designation.

and several individual professors had discriminated against the plaintiff as a "single mother" and as the mother of a child with special medical needs by failing to provide her with adequate financial support and study time to make obtaining a medical degree feasible. She also sought review of failing grades that she received in some of her classes. The district court held that the Title IX claim could not be maintained because women with children, even those with "special needs children," are not members of a protected class, and because such action cannot be maintained against individual defendants. The court held that the Women's Educational Equity Act claim could not be maintained because it had no provision for relief based on perceived gender discrimination. As to the § 1983 claim, the court held that the Medical College was entitled to Eleventh Amendment immunity as

a state agency and that the individual defendants were protected from suit by the doctrine of qualified immunity. Finally, the court held that the state law claim was insufficiently pleaded.

Having had the benefit of oral argument, and having studied the record on appeal and the briefs of the parties, we are not persuaded that the district court erred in dismissing the complaint. Because the reasons why judgment should be entered for the defendants have been fully articulated by the district court, the issuance of a detailed opinion by this court would be duplicative and would serve no useful purpose. Accordingly, we AFFIRM the judgment of the district court upon the reasoning set out by that court in its opinion and order entered on October 23, 2000.

NO. 00-4492

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

AISHA KELLY,	)	FILED
	)	
PLAIANTIFF-APPELLANT,	)	SEPTEMBER 5,
	)	2002
	)	
V.	)	LEONARD GREEN,
	)	CLERK
MEDICAL COLLEGE OF	)	
OHIO, ET AL.,	)	ORDER
	)	
DEFENDANTS-APPELLEES.	)	

BEFORE: KEITH AND DAUGHTREY, CIRCUIT JUDGES; AND MARBLEY, *DISTRICT JUDGE.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

LEONARD GREEN, CLERK

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*Hon. Algenon L. Marbley, United States District Judge for the Southern District of Ohio, sitting by designation.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

AISHA KELLY,	)	FILED: OCTOBER 23, 2000
PLAINTIFF,	)	
	)	NO.: 3:00CV7423
V.	)	
	)	ORDER
MEDICAL COLLEGE OF OHIO, ET AL.,	)	
	)	
DEFENDANTS.	)	

This is a discrimination case in which plaintiff alleges she was treated unfairly by the Medical College of Ohio (MCO), based on her status as a single mother. Plaintiff Aisha Kelly brings this action against defendants MCO; Deb Heineman, Director of Student Services and Financial Aid for MCO; Dr. Robert Crissman, Professor of Microanatomy at MCO; and the U.S. Department of Education, Student Financial Assistance Division. Plaintiff prays for relief pursuant to 20 U.S.C. §7231; the Women's Educa-

tional Equity Act of 1994; 42 U.S.C. §1983; 20 U.S.C. §1681, Title IX of the Educational Amendments of 1972; and the state law tort of intentional infliction of emotional distress. This court has jurisdiction pursuant to 42 U.S.C. §1983 and 28 U.S.C. §1367. Pending is defendants MCO, Heineman, and Crissman's motion to dismiss plaintiff's complaint pursuant to Fed.R.Civ.P.12(b)(6). Also pending is the U.S. Department of Education's motion to dismiss pursuant to Fed.R.Civ.P.4 and 12 (b)(6). For the following reasons, defendants' motions to dismiss shall be granted.

BACKGROUND

Beginning in the 1995-96 school year, plaintiff was enrolled as a medical student at MCO. (Complaint at P.5). Plaintiff was also the single mother of a young daughter whose father had left the country and subsequently died. (Id. at P.4). Plaintiff's

daughter was partially disabled and required continuous care. (Id.). Due to difficulty in obtaining suitable care for her daughter, plaintiff's study time was limited. (Id.).

Plaintiff requested her professors to schedule her examinations so that she could have more time to study. The professors refused. (Id. at P5). Plaintiff also asserts that financial aid was not sufficient to support her and her daughter. (Id. at P6). Additionally, plaintiff's studies were further limited by time constraints associated with viewing and studying cadavers and other laboratory work. (Id. at P7).

Plaintiff later failed numerous courses. (Id. at P9). She requested and was refused a copy of the exam questions and reconsideration of the grades by school officials. (Id.). Plaintiff was required to repeat the failed courses at additional

expense, thus delaying her progress through medical school. (Id. at P9).

Plaintiff's financial aid checks were delayed in the 1997-98 school year. (Id. at P10-11). In addition, difficulties caring for her daughter and course failures continued. (Id.). After plaintiff's dismissal and subsequent internal appeal, the dean reinstated plaintiff under a new curriculum, which was different from the part-time status under which plaintiff initially was enrolled. (Id. at P12).

Plaintiff argues that MCO failed to make reasonable adjustments and allowances in consideration of plaintiff's restricted opportunities to attend class and study, and failed to review and reconsider plaintiff's exam answers. (Id. at P12A). Plaintiff failed the instant action on July 14, 2000, claiming that MCO discriminated

against her by failing to consider her situation as a single mother. (Id.).

DISCUSSION

I. FED.R.CIV.P. 12(b)(6)

No complaint shall be dismissed unless the plaintiff has failed to allege facts in support of her claim that, construed in plaintiff's favor, would entitle her to relief. Conley v. Gibson, 355 U.S.41. 45-46 (1957). When deciding a motion brought pursuant to Fed. R. Civ. P. 12 (b)(6), the inquiry is essentially limited to the content of the complaint, although matters of public record, orders, items appearing in the record, and attached exhibits may also be taken into account. See Yanacos v. Lake County, 953 F.Supp.187,191 (N.D.Ohio 1996). The court must accept all the allegations stated in the complaint as true, Hishon v. King & Spauling, 467 U.S.69,73 (1984), while viewing the complaint in the light

most favorable to the plaintiff. Sheuer v. Rhodes, 416 U.S. 232, 236 (1974). A court, however, is "not bound to accept as true a legal conclusion couched as a factual allegation." Papasan v. Allain, 478 U.S. 265, 286 (1986).

II. TITLE IX

A. CLAIMS AGAINST MCO

Plaintiff alleges MCO discriminated against her in violation of 20 U.S.C. §1681 (Title IX). Plaintiff's claim fails, however, because plaintiff has not shown that MCO treated her differently because of her sex.

Title IX is intended to protect against gender discrimination in the educational setting. Title IX states in pertinent part:

> No person in the United States shall, on the basis of sex, be excluded form participation in , be denied the benefits

> of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance."

20 U.S.C. §1681(a). Plaintiff must prove that a particular practice has caused a significant adverse effect on a protected group. Chipman v. Grant Cty. School Dist. 30 F.Supp.2d, 975, 979 (E.D.Ky. 1998). Similarly, under the disparate treatment theory, plaintiff must prove she is a member of a protected class who has been treated differently because of her sex. Id.

Title IX cases are analyzed similarly to Title VII cases. Ivan v. Kent State Univ., 863 F.Supp. 581, 586 (N.D. Ohio 1994). Accordingly, after a plaintiff establishes a prima facie case of discrimination, the burden shifts to the employer or institution to articulate some legitimate reason for the adverse action. See Id. If the employer or institution ar-

ticulates a non-discriminatory reason, the plaintiff must show that the stated reason is a pretext. Id.

Additionally, courts have held in the Title XII context that "women with children" are not members of a protected class, Maganuco v. Leyden Comm. High School Dist. 212, 939 F.2d 440, 445 (7th Cir. 1991), and women whose children have medical problems are also not members of a pro-tected class. McNill v. New York City Dept. of Correction. 950 F.Supp. 564,571, (S.D.N.Y. 1996).

Plaintiff asserts that MCO discriminated against her under Title IX due to her status as a single mother. As defendants point out, however, a person's status as a single parent is not gender specific. See Barnes v. Hewlett-Packard Co., 846 F. Supp. 442, 444 (D.Md. 1994). Accordingly, plaintiff's status as a single mother does not make her a member of a pro-

tected class under Title IX. Therefore, plaintiff can-not maintain a claim against MCO under Title IX.1

B. DEFENDANTS HE I NEMAN AND CRISSMAN

Plaintiff's broad Title IX claim also purports to include defendants Heineman and Crissman. Title IX, however, does not create a private cause of action against individuals.

Application of Title IX is limited to any "educational program or activity receiving federal financial assistance."20 U.S.C.§1681(a). The phrase "educational program or activity" refers to an educational institution and not to its employees and agents. Petrone v. Cleveland State Univ., 993 F.Supp. 1119, 1124 (N.D. Ohio 1998). Accordingly, Title IX will only support a cause of action against a federal grant recipient. Therefore, the Title IX

claims against defendants Heineman and Crissman are dismissed.

III. 42 U.S.C. §1983

Section 1983 of the civil rights act, 42 U.S.C. §1983, is designed both to prevent the states from violating the Fourtheenth Amendment and certain federal statutes and to compensate injured plaintiffs for deprivations of their federal rights. Section 1983 states in part:

> Every person who, under the color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities
> secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Plaintiff alleges that defendants discriminated against her by emonstrating a bias and prejudice against plaintiff as

a single mother. Specifically, plaintiff points out her difficulty in obtaining the requisite study time and access to laboratory work necessary for a medical student to succeed. Additionally, plaintiff claims that her professors unreasonably and arbitrarily refused to schedule her examinations so that she would have enough time to pass. Plaintiff's difficulty in obtaining suitable child care for her daughter along with her administrative problems with financial aid also overshadowed her scheduling problems at MCO.

I find that plaintiff's claims under 42 U.S.C. §1983 fail against MCO and the individually named defendants. MCO is immune from the remaining claims based on the Eleventh Amendment. Hall v. Medical College of Ohio, 742 F.2d at 303-304 (6th Cir. 1984). Also, the individually named defen-

dants acting in their official capacities are not "persons" under §1983. See Will v. Michigan Department of State Police, 491 U.S. 58, 70 (1989).

A. ELEVENTH AMENDMENT IMMUNITY FOR MCO

The Eleventh Amendment bars private citizens from maintaining an action in federal court against a state or state agency, in law or in Equity. The Eleventh Amendment provides:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The Eleventh Amendment prevents authorization of suits by private parties against unconsenting states, and restricts the judicial power under Article III. Article I cannot be used to circumvent the constitutional limitations placed upon federal

jurisdiction. Seminole Tribe of Florida v. Florida, 517 U.S. 44, 71-72 (1996).

MCO was created under O.R.C. §3350, and is governed by a Board of Trustees appointed by the Governor. In Hall, 742 F.2d at 303-304, this Court stated:

> Taking into account the status of state colleges and universities under Ohio's law of sovereign immunity and the Court of Claims Act, as well as the sources of revenue available to MCO, its performance of a governmental function, its non-corporate nature, and the fiscal and academic restraints imposed upon the school by state law...MCO lacks operational autonomy from, and is financially dependent on, the State of Ohio, and is consequently an arm of the state entitled to immunity in federal court.

Accordingly, MCO is an instrumentality of the State of Ohio, and therefore immune under the Eleventh Amendment for all of plaintiff's remaining claims.

B. CLAIMS AGAINST DEFENDANTS HEINEMAN AND CRISSMAN

While acting in their role as school

officials, defendants Heineman and Crissman are also entitled to qualified immunity for acts committed in the course of their duties. Government officials who perform discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Id. at 307.

The Supreme Court has stated that courts are completely not suited to fairly evaluate the substance of the multitude of academic decisions that are made daily by faculty members. Regents of Univ. of Michigan v. Ewing. 474 U.S. 214, 226 (1985). When judges are asked to review the substance of a genuinely academic decision, such as this one, they should show great respect for the faculty's professional judgment. Id. at 225. Only where

an academic decision is "arbitrary or capricious" or where the determination is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment, can a court intervene in an academic matter. Id.

While the rigors of medical school create different hardships for many students, defendants Heineman and Crissman have not actively engaged in any particular practice resulting in a significant adverse effect on any specific group. While plaintiff alleges that she did not have adequate day care accommodations and study time, other students could articulate other similarly adverse circumstances regarding their own particular situations.

Incidentally, such social and academic

hardships are not attributable to MCO or defendants Heineman and Crissman. As explained above, these circumstances do not warrant judicial intervention in an academic matter.

While the record demonstrates that plain-tiff's circumstances caused her diffi-culty as a medical student, plaintiff has failed to establish that defendants' decisions were arbitrary or capricious, or a substantial departure from the academic norms of a medical school. Moreover, plaintiff was afforded rights to internal remedies and procedures, and thus was not denied due process. Under these circumstances, I find that defendants Heineman and Crissman's responses to plaintiff's time constraints and other concerns were reasonable under the circumstances.

V. CLAIMS AGAINST THE FEDERAL GOVERNMENT

Plaintiff has also filed claims against the U.S. Department of Education. Title IX, however, does not provide for a private right of action against the fed-eral government. See Cannon v. Univer-sity of Chicago, 441 U.S. 677 (1979). Similarly, the Higher Education Act of 1965 (HEA), 20 U.S.C. §1070 et seq.. does not provide for a private right of action. Therefore, plaintiff's claims against the U.S. Department of Education are dismissed as a matter of law.

VI. STATE LAW CLAIM

Plaintiff also alleges a state law claim of intentional infliction of emotional distress against defendant Heineman. Intentional infliction of emotional distress occurs when a person intentionally or recklessly causes serious emotional distress to another by extreme and outrageous conduct. See Yeager v. Local Union 20, 6

Ohio St.3d 369 (1983). Plaintiff has failed to sufficiently plead this claim. Under these facts, I find that plaintiff could not in good faith maintain this cause of action. Therefore, plaintiff's emotional distress claim is dismissed.

CONCLUSION

It is, therefore,

ORDERED THAT

Defendants' Motions to Dismiss shall be granted on all claims.

s/James G. Carr
James G. Carr
United States
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

AISHA KELLY,	)	FILED: October 23, 2000
PLAINTIFF(S),	)	
	)	NO. 3:00CV7423
V.	)	
	)	JUDGMENT ENTRY
MEDICAL COLLEGE OF OHIO, ET AL.,	)	
DEFENDANT(S).	)	

For the reasons stated in the Opinion and Order filed on October 23, 2000

IT IS HEREBY ORDERED, ADJUDGED and DECREED that

1. The defendants' motions to dismiss shall be granted on all claims.

2. Case closed.

So Ordered.

/s/James G. Carr
United States
District Judge

SECTION I. FOURTEENTH AMENDMENT

"SECTION 1.- All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

TITLE 42 - SECTION 1983

"§1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively

to the District of Columbia shall be considered to be a statute of the District of Columbia.
(R.S.§1979; Dec. 29, 2979, P.L. 96-170, §1, 93 Stat. 1284; Oct. 19, 1996, P.L. 104-317, Title III, §309(c), 110 Stat. 3853.)"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

AISHA KELLY,	FILED: JULY 14, 2000
PLAINTIFF,	NO: 3:OOCV7423
VS.	JUDGE: JAMES G. CARR
MEDICAL COLLEGE OF OHIO,	
DEB HEINEMAN, M. A., M. ED., DIRECTOR, STUDENT SERVICES AND FINANCIAL AID,	COMPLAINT
DR. ROBERT CRISSMAN, PROFESSOR OF MICROANATOMY MEDICAL COLLEGE OF OHIO,	
U.S. DEPARTMENT OF EDUCATION, STUDENT FINANCIAL ASISSTANCE DIVISION,	
DEFENDANTS.	

COMPLAINT

1. Plaintiff Aisha Kelly is an American citizen, born of parents who were doctors, and resides in Toledo, Ohio.

2. Defendant, Medical College of Ohio, is a state formed and enacted corporation, conducting a medical college in Toledo,

Ohio. Defendant, Deb Heineman, is the Director, Student Services and Financial Aid, of the Medical College of Ohio, hereinafter referred to as MCO, and is the person administering financial aid for students, which is hereinafter referred to. Defendant Robert Crissman, is a Professor of Microanatomy and related subjects at MCO.

3. Jurisdiction in this Court is given, and relief prayed for in this Action, are founded and based in part, upon the Title 20 USC paragraph 7231, the said act having a short title, "Women's Educational Equity Act of 1994", and jurisdiction is also based upon Title 42, Section 1983; and on other related Federal Acts, and the Constitution many of which are not recognized or known presently by Plaintiff or her Counsel. See Title 20, USC 1681; a ban on discrimination on sex; believed relevant. Defen-

dant U.S. Department of Education is made a Defendant, Par. 13A, P.7.

4. In the 1995-96 school year, Plaintiff then pregnant, matriculated at MCO, having previously informed the MCO that she wanted to be enrolled, and was enrolled, on a part time basis, having previously heard that mothers with young babies, had stress, not ordinarily incurred by other women or men. At the time of her matriculation Plaintiff was supported in part, by her husband, Damien Kelly, who after the birth of their child, Arielle, left in February of 1996, and went to Australia, and unfortunately subsequently died there, during the third quarter of Plaintiff's first year at MCO. Plaintiff's parents, both are doctors, and her father had died before her matriculation. At the time of her matriculation, and before, Plaintiff was estranged from her mother;

and had no means of financial support, except that given by the Government. Anyway, Plaintiff had no family members or others, except those whom she hired, to care for her baby. During the time that her husband was here, Plaintiff did well in her classes, and passed all courses. Then, after his departure, as stated above, continuously, Plaintiff had been denied the opportunity due to family circumstances, of having to provide care for her child, the child being partially disabled, and having an allergy, that prevents her from eating certain foods and causes other disabilities. Accordingly, except for those classes where the child care facilities are available, to look after her daughter, during which her child can stay, without being exposed to allergy forming food, Plaintiff had been denied the opportunity to study, as the other stu-

dents, which has in time, caused her to fail, and not to be able to pass the courses. Her first year, Plaintiff passed all courses in which she was enrolled, except Physiology which she failed to pass by six questions. Her failure was directly caused by the Administrator's changing the time of the exams, when she could not afford child care; and Plaintiff did not have the money to buy the extra special child care needed for her to study. Accordingly, then Plaintiff passed the regular and customary MCO procedure to "remediate" the course in Physiology.

5. At MCO, the average and other medical students have approximately 26 hours of study, each weekend, which was denied the Plaintiff because she could not afford nor can she secure the requisite child care for her to have that much time. During her time at MCO, Plaintiff

could study, only when her child was sleeping, or was in child or day care. Plaintiff requested her Professors to schedule her examinations so that she would have time to pass, but they unreasonably and arbitrarily refused.

6. Throughout her time at MCO, Plaintiff has not had child care on the weekends for which as stated above, she was denied 26 hours of studying which the other students had. Financial aid was not sufficient, though needed for those purposes, to enable her to have the requisite study time which she and any other medical student needed. In short, this is the rank discrimination against her sex, which Plaintiff is facing and has faced.

7. Although Plaintiff had failed her first course in Physiology, but on remediation, she had the time needed then to study

for exams, and she earned a pass. However, in the related courses of Microanatomy and Gross Anatomy, Plaintiff, failed both courses, and in the process of remediation, was denied, discriminated against by the Professor, Dr. Carol Bennett-Clarke, who became the course Director of Gross Anatomy, and there, imposed conditions upon her, which did not allow her time for adequate and requisite study, and accordingly, in time Plaintiff was given a failing grade in Microanatomy. So, in regard to her studies in Microanatomy and Gross Anatomy, she was discriminated against, because she was not allowed to study the cadavers and other laboratory work, with other students, at times, when she could come, as was communicated to Defendant Bennett-Clark as well as Professor Robert Crissman, and in time this caused her to fail. Likewise, in the remediation process, she was discrimi-

nated against for not being given, as were other students, sufficient notice ahead of time of examinations nor allowed to study, nor was she able to secure and she was denied adequate childcare, so she could not study as did other students. Further, Professor Robert Crissman, refused to administer a split exam, one in the morning, and the other part in the afternoon, so that she could have ample time to study, for the same, and to take the second part of the two-part exam, and she failed. And likewise, denied her the right to see the "slides", which were part of the photographic and microscopic tests, and said the slides were only allowed to be examined during regular course hours, when Plaintiff could not study nor attend because she did not have adequate child care sufficient to pay for the child care for those hours. This again, goes to the meat of the denials

imposed by MCO, by cause of the insufficient funds, and the way that the MCO failed reasonably to meed her needs, which were the needs that any student in her situation and circumstances would have. And so, in the remediation and the intended Appeal, Plaintiff came within one point, of securing a passing grade in Gross Anatomy and Microanatomy. Having grounds to believe another Ph.D. would properly rule she had passed, Plaintiff asked Dr. Crissman, and the relevant persons, for the right to be informed of the specific questions, she failed, and the specific questions and answers which she had passed, so she could focus intelligently her studying up on the same, and although these were requested, these were denied, another act of discrimination against her in her special circumstances.

8. Now, in order to know, that her grades deserved a passing grade, Plaintiff needs, and has requested but been refused, a copy of the exam questions, a list of the questions for which the Professor has given her credit as a passing, as a result of her internal protest, so as to remove and determine the questions which she has passed, from further consideration, and Plaintiff has asked for a copy of the electron micrographs and any other visual material used for the lab practical. The "lab practical", and the "practical questions", refer to a special form of electron micrographs, x-rays, or cards, which are utilized in the study of the Microanatomy; if Plaintiff were allowed to see those, of which the Defendants have many, to study on her own, and thus prepare herself, and she could better thus pass all examinations needed

for qualifying her for completion satisfactory of all requisite courses.

9. Following Plaintiff's enrollment in Microanatomy, Plaintiff enrolled in Neuroanatomy and Embryology. When so enrolled, Plaintiff's babysitter mistreated her daughter, and Plaintiff then, upon immediately learning, fired her babysitter; and other childcare services were not then available. Plaintiff then could not drop new courses in Neuroanatomy nor in Embryology. After failing Microanatomy, referred to above, Plaintiff then was ineligible to reme-

diate the failures F's, in Neuroanatomy and Embryology. She had to repeat those two courses during the regular year which delayed her progress in school a year, costing additional $38,000.00 in additional aid, plus interest.

10. In 1997-1998 year, due to mistakes by the MCO Financial Aid Department, and not getting my financial aid checks to Plaintiff, as needed, particularly for babysitter money, my most responsible and reliable babysitter quit, because she was not paid. Plaintiff did the best she could in trying to get childcare for her daughter. Then, not having sufficient babysitter time to study, Plaintiff failed in Embryology and in Gross Anatomy. Although in each course, Plaintiff made a sufficiently high grade that she was eligible ordinarily to remediate each course.

11. Dr. Metting, contrary to the rules in Remediation, had enrolled Plaintiff in the Gross Anatomy course; and Dr. Metting said she had to do this because otherwise according to Defendant Heineman, in charge of financial aid, Plaintiff would be denied

financial aid, but this was not true. After this, Plaintiff had to go ahead under those conditions. Dr. Carol Bennett-Clarke, and the Professor in Gross Anatomy, then made the following discriminatory orders, in that she assigned Plaintiff to a group, who worked on cadavers. The work on the cadavers was done by two members, on one side and one member on the other side. The cadaver study and work is impossible with only two people. Plaintiff requested Dr. Carol Bennett-Clarke to reassign her to another group, but Dr. Clarke refused. Since times assigned for this cadaver study in groups, made it impossible for Plaintiff to secure childcare for her daughter. The hours were irregular and Plaintiff found a group with whom she could meet, but they were denied by Dr. Carol Bennett-Clarke.

12. Although Plaintiff had requested a tutor, Dr. Carol Bennett-Clarke specifi-

cally pointed out at staff meetings that no one was to talk with Plaintiff, nor answer Plaintiff's questions, nor tutor her. Plaintiff, frustrated, met with discriminatory acts, then on three times, two of which were in writing, requested Dr. Metting to be dropped from the Gross class. She refused. Plaintiff was not supposed to be enrolled, and this was another discriminatory, arbitrary, contrary to the rules, act by MCO, and the persons directly involved individually. This caused Plaintiff to receive an F and she was then dismissed. Then, Plaintiff took an internal appeal to Dean Gohara, who had reinstated her, on condition, that Plaintiff attend classes in the new curriculum, which is contrary to her basic agreement, and MCO's original acceptance and taking of Plaintiff as a part-time student.

NEED FOR ACADEMIC ADJUSTMENTS

APP. P. 41

OF REQUIREMENTS FOR ATTENDING

CLASSES AND TAKING EXAMINATIONS.

12A. In various classes, and departments, due to Plaintiff's restrictions on her time, when she can attend class, or study, MCO, if it desired, could make reasonable adjustments, and allowances, which would not interfere substantially nor really the administration of the College, and its high standards. These are matters of academia, and can be worked out and met as the occasions arise. But, MCO so far, refused to recognize the needs of mothers in the situation of Plaintiff, and has so discriminated against women.

12B. If Plaintiff is allowed to see the questions and answers, wherein she is but one or two points away from securing a passing grade in Microanatomy, then she will be able to meet and pass that course, and then be able to successfully complete

remaining requisite courses. In the past college courses, Plaintiff has been the upper half, for sure, and in some classes, very near the top, scholastically; and has the mental and emotional ability, and most certainly the determination, to be a doctor, which has been her lifelong ambition. Plaintiff got along well with her father, a doctor, but unfortunately, did not so relate to her mother.

12C. All of her problems as to the courses of Gross Anatomy, Microanatomy, can, and may be met, within the proper guidelines and reasonable requirements, of MCO. There's nothing here, contrary to the accomplishment of the high stand-ards of academia of MCO.

13. If Plaintiff is given the requested questions and answers so she can be given the opportunity to prove, and does prove, that she was entitled to a passing

grade in Microanatomy, then 2 F's, which now stand in her record, would be removed in Neuroanatomy and Embry-ology, and two passes would take their places; and this would be just and of great and necessary benefit to Plaintiff. Four F's can give MCO the option to discharge the student.

The recommended text, in Microanatomy, which bought by Plaintiff, was "Basic Histology" by L. Carlos Junqueira, 7th Edition. Plain-tiff, doing the best she could to recall the substance of the questions "in ques-tion", has discussed what she believes her answers were, and she had been told by 2 Professors at T.U. and 2 Professors at MCO, (the latter refusing to testify) that she is and was entitled to a passing grade.

13A. Defendant U.S. Department of Education administers the Student Finance Aid program, and is joined to assure that whatever relief from said Defendant is

ever relief from said Defendant is needed, the Court will be in a position so to Order them; and also at this time, because without such financial aid, Plaintiff is hopeless, and will depend on such aid while trying to become a doctor.

14. In various classes, and departments, due to Plaintiff's restrictions on her time, when she can attend class, or study, MCO, if it desired, could make reasonable adjustments, and allowances, which would not interfere substantially nor really the administration of the College, and its high standards. These are matters of academia, and can be worked out and met as the occasions arise. But, MCO, so far, refused to recognize the needs of mothers in the situation of Plaintiff, and has so discriminated against women.

15. If Plaintiff is allowed to see the questions and answers, where she is but one

or two points away from securing a passing grade in Microanatomy, then she will be able to meet and pass that course, and then be able to success- fully complete remaining requisite courses. In the past college courses, Plaintiff has been in the upper half, for sure, and in some classes, very near the top, scholastically; and has the mental and emotional ability, and most certainly the determination, to be a doctor, which has been her lifelong ambition. Plain-tiff got along well with her father, a doctor, but unfortunately did not so relate to her mother.

16. All of her problems as to the courses of Gross Anatomy, Microanatomy, can, and may, be met, within the proper guidelines and reasonable requirements, of MCO. There's nothing here, contrary to the accomplishment of the high standards of academia of MCO.

INTENTIONAL TORT BY DEFENDANT

HEINEMAN AGAINST PLAINTIFF.

17. Defendant Heineman, under the guiss of claiming that it was her obligations in the proper enforcement of the Federal Financial Aid Program, has made deliberate, intentional attempts, to prejudice, harm, and to cause Plaintiff not to be able to attend her courses at TU, nor to get back into MCO.

18. While Plaintiff has attended colleges, at Ohio State, and since, Plaintiff has obtained several loans for her college expenses, and there is no requirement for repayment, on these loans, as long as, Plaintiff is enrolled at some college or university. In other words the payment of the loans and their interest is "deferred". This is well known by Defendant Heineman, and all others working on the Federal Financial Aid Program for Education. Thus,

any misrepresentations which are brought to light, by Defendant Heineman, can be claimed to be a part of the proper enforcement duties of her office, but in fact, are not, but are intended to work harm and prejudice of Plaintiff, as they would harm and prejudice any other person, when done without cause. Plain-tiff alleges that a thorough examination of the records, of all of Defendant Heineman's actions, call for the inference, that she has acted deliberately and intentionally, and has harmed, Plaintiff accordingly.

19. In the Federal Financial Aid Program, there are different types of loans, with different benefits, lower in-terest rates, and repayment privileges. One of the most favorable loans, for the borrower, is the so-called "Perkins Loan", for which Plaintiff applied but was denied, as a re-

sult of Defendant Heineman's uncaused wrongful actions.

20. On March 18, 1999, Defendant Heineman, wrote a letter to Dr. Patricia Metting, Associate Dean of Student Affairs, which accused Plaintiff of providing fraudulent information in order to obtain federal financial aid funds. Instead of simply asking Plaintiff to provide additional documentation, Defen-dant Heineman brought the aforesaid internal investigation and formal accu-sation. Plaintiff was required to have a formal meeting with Dr. Metting, Defendant Heineman, Dr. Barry Richardson, to answer and secure an exoneration and acquittal from these charges, which was done, took a substantial block of Plaintiff's time from study, and delayed receipt of financial aid monies to which she was entitled, which exacerbated her financial problems at MCO and profoundly em-

barrassed Plaintiff, as it would any person.

21. Inasmuch as Plaintiff's father is dead, and Plaintiff is estranged from her mother, and does not know where her mother is, Plaintiff has requested that MCO waive the MCO requirement that she provide information about Plaintiff's parents' finances. The Federal Government has ruled specifically that students no longer have to provide such information; but it is an MCO requirement. On or about April 22, 1999, Defendant Heineman manipulatedly recommended to the powers that be, that Plaintiff's mother, 78 years of age or more, shown previously to be of any fin-ancial aid to the Plaintiff.

22. About August 12, 1999, as a result, of Plaintiff having sent the waiver to Ohio State University on her loans

there, Plaintiff sent it to the wrong place, and accordingly, Ohio State then, apparently caused Plaintiff to be put in a default status for nonpayment. In time, Plaintiff contacted Ohio State, and the mistake was corrected, and the default status was removed. Nevertheless, Defendant Heineman used this as an objec-tion to Dean Gohara, in passing on Plain-tiff's application for a Perkins Loan to Plaintiff.

23. On or about October 27, 1999, Defendant Heineman wrote to Bank One, Toledo, Ohio, in which she instructs them to "demand full payment" from Plaintiff. Additionally, she stated that Plaintiff had never attended classes at MCO, used this as a basis of her statement that Plaintiff had "failed to establish eli-gibility" which means that Plaintiff was not eligible for the money to begin with. Actually, Defendant Heineman had no knowl-edge that Plain-

tiff had not attended class, and that statement was untrue. Apparently, Bank One was not interested in any of this. Bank One had wanted to know if Plaintiff had initially registered at MCO and why Defendant Heineman had re-leased the money of the loan to Plaintiff. Defendant Heineman told Bank One that Plaintiff had never enrolled. Then, in a statement of what Defendant Heineman had spoken in a verbal conversation with MCO Dr. Metting, Defendant Heineman would not retract nor recant her statement, and Plaintiff's record and standing was left defamed. Defendant Heineman made other complaints, took other actions, but Plain-tiff herself, called Bank One in the USA group, or her loans, plead her case, and there followed an internal investigation, in which, Plaintiff was allowed to keep the previously awarded money, and (2) the USA group reversed

Plaintiff's default status; and these two actions qualified Plaintiff for financial aid from Univer-sity of Toledo.

24. Plaintiff states also that Defendant Heineman, telephoned to Professor Nancy Welman, Graduate School at University of Toledo, and told her that Plaintiff had never graduated form OSU. This caused the UT Graduate School apparently to call the Financial Aid Department at UT and instructed them to cancel Plaintiff's aid. This had caused an internal inves-tigation.

25. On or about February 9, 2000, or thereabouts, Dr. Metting at MCO wrote to Dr. Richardson at MCO, concerning Plaintiff's situation with Bank One and the fall semester loans. The statements were erroneous; apparently, as a result of Defendant Heineman's actions.

26. Defendant Heineman, in her other actions, above referred to, demonstrated a

bias and a prejudice against Plaintiff, without cause. In real life and particularly in Academia Defendant Heineman's acts and omissions have been, and are, outrageous; and have damaged and hurt Plaintiff severely and intentionally; and such adversely affect and hurt her over all status and program at MCO. Plaintiff sincerely wants to become a doctor, and in her way has gone through much undeserv-edly, because she is determined to accom-plish that commendable goal.

26A. The several acts and policies of Defendants have prejudicially and individually discriminated against Plaintiff for sex and denial of equity gender by the foregoing, including without excluding the following deprivations and violations, each a Constitutional or statutory offense;

A. Causing a "disproportionate impact" upon women applicants;

B. The denial of child care places burdens on Plaintiff and other women, which falls almost exclusively on women;

C. Deprivated Plaintiff by various acts of an equal educational opportunity, and rendered the benefits of a Medical College education less valuable, and in significant degrees have in effect denied such opportunities by among other things, not having the requisite time to study, as needed by students because she cared for her daughter, * as set forth herein in Paragraphs 7, 5, 6, 10;

D. The denials and hardships, and harms caused Plaintiff by Defendants are arbitrary, capricious, and not serving the proper and good purposes of academia and MCO, or any other medical school; as set forth in Paragraphs 7, 11, 12, 13;

E. The totality of the circumstances have deprived Plaintiff of a lawful opportunity to study and become a doctor;

F. Defendant Dr. Crissman, Professor of Microanatomy, so far has denied Plaintiff who challenged internally Dr. Crissman's Microanatomy F grade and secured correction of some nine answers to passing, and needing only one or two more corrections to merit a passing grade, has denied her the copies of the Questions and Answers corrected and those not corrected, together with the electronic micrographs which Plaintiff needs to submit to qualified Professor who have indicated that on Plaintiff's recollection of what was asked and answered, that she merited a passing grade, but such are obviously needed to comply with the proper, customary demands of Academia and the Law, as set forth in Paragraphs 13 and 7.

STATEMENT OF URGENCY

FINANCIAL AND ACADEMICAL CRISIS,

PRESENTLY BEING FACED BY PLAINTIFF.

27. Plaintiff's present leave of absence from MCO will expire on August 23, 2000; and, therefore, Plaintiff needs to renew her enrollment at MCO, and take the steps, so that she will not be dismissed for lack of so doing.

28. If MCO were to dismiss her as a medical student, Plaintiff then could not enter any other medical school in the United States. Plaintiff's problems are both financial, and academic; and there is need for current relief in each area. The primary need for relief is to secure a passing grade for Plaintiff in Microanatomy, which she now states and has stated, was unlawfully, and without just cause, denied her all along. To remedy this matter lawfully, Plaintiff needs for Dr. Crissman

to give her all of the questions which he asked, in the examination, all of her answers submitted in the examination; and all of the electron micrographs, which he has multiple copies of; anything else he used in the examination, because this group of documents are needed for any one fairly and intellectually to appraise her performance of passing or not passing, in determining the so-called "practical questions" which she had submitted, in the examination. Further, these issues are passed upon in Equity, and could be promptly held and determined either at a Preliminary Injunction or at an early set Trial, for this issue. In summary, Plaintiff will be without funds for her daughter and Plaintiff to live, without the U.S. financial aid as a student; and this is very crucial.

29. WHEREFORE Plaintiff Aisha Kelly respectfully prays the Court for all re-

lief, equitable and "at law", to which she is entitled, and including:

A. For an Order on Defendant Crissman to give immediately in one day, and before any Hearings in this action, the questions and answers by Plaintiff in the course on Microanatomy, in which she was given an F, which questions and answers Dr. Crissman has corrected to a passing grade; and also all those remaining questions and answers on which he has so far refused to correct to a passing grade; and also the electronic micrographs, of which he has multiple copies, used in his questions;

B. For Orders on Defendants to remove all F's on her transcript or other records, once Plaintiff proves that she is entitled to a passing grade in Microanatomy so that once Plaintiff's grade in Microanatomy is changed from an F to a P that Plaintiff's transcript will be changed because she has

now passed Neuroanatomy and Embryology, as follows:

	Current transcript	Corrected transcript would be
Neuroanatomy	F HP	P
Embryology	F P	P

C. For an Order to MCO that Plaintiff be required to pass only the minimum courses for which MCO has allowed the other students matriculating in August, 1995, to graduate; so there will be equal treatment by MCO of all others who matriculated when Plaintiff did, as to the requirements for graduation;

D. For an Order to MCO to mark out, delineate, and identify the courses on the master schedule for lectures and courses which Plaintiff must take and pass, so as to graduate; and at the same time for an Order to MCO not to require Plaintiff to complete any more courses than was required of any of the others who matriculated when

Plaintiff did, and who have now been allowed to graduate;

E. For an Order and decree limiting the number of courses so that Plaintiff may graduate in two years, and so that Plaintiff's total expenses as charged by MCO, may be met and at the same time allow a reasonable standard for Plaintiff.

F. For such other and further relief, including a temporary Restraining Order, and a Preliminary Injunction, and a Final Injunction granting all relief to which Plaintiff is entitled in Equity; and attorney fees and costs; and

SECOND CAUSE OF ACTION AT LAW.

30. Plaintiff Aisha Kelly refers to, and adopts herein all of her foregoing allegations, and the same are made a part of this Second Cause of Action. WHEREFORE Plaintiff Aisha Kelly prays that she may have Judgment against each Defendant for

$100,000 or more, and attorney fees, interest and costs.

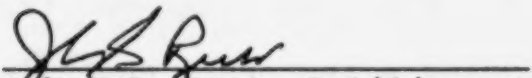
Plaintiff Aisha Kelly by:

_____

John G. Rust,\
Her Attorney

The above completes the Appendix.

Respectfully submitted,



JohnC/G. Rust, Petitioner's Attorney